IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 469 OF 2003.

1. Ms. Maria Francisca Olivia
   de Braganca Fernandes (since deceased):

2. Mrs. Ema Maria Alcina Fernandes.

3. Mrs. Clementina Conceicao Dias
   Fernandes (since deceased).

4. Mrs. Grace Fernandes.

5. Mr. Luis Filipe Jose Socorro
   Fernandes Rodrigues.

6. Maria de Fatima Suzette Fernandes
   Rodrigues,
   All major of age,
   residents of 31st January Road,
   Fontainhas, Panaji, Goa. ... Petitioners.

VERSUS

1. Lia Cristina Fernandes alias
   Lia Cristina Baretto.

2. Filomena Mary Fernandes alias
   Filomena Mary Silveira.

3. Virginia Fernandes.

4. Hilda Nancy Fernandes.

5. Natalina Fernandes,
   all major of age, residents
   of Alto Porvorim, Bardez,
   Goa.

6. Mr. Mario Filipe
   Oswaldo Fernandes,
   residing at 31st January Road,
   Fontainhas, Panaji, Goa. ... Respondents.

Mr. J. Godinho, Advocate for the Petitioners.

Mr. Rohit Bras De Sa, Advocate for the Respondents No.1 to 5.

CORAM: A.M. KHANWILKAR, J.

DATE: 20TH NOVEMBER, 2003.

ORAL JUDGMENT:

Heard both sides.

2. Rule. Rule made returnable forthwith by consent. Mr. De Sa waives notice for all the respondents.

3. As short question is involved, Petition is taken up for hearing by consent.

4. The only question that needs to be addressed in this Writ Petition is whether the Court below was right in allowing the application preferred by the respondents for closing the evidence of the plaintiffs on the ground that more than three adjournments have already been granted and the Court was not competent to grant the fourth adjournment. It is not in dispute that this is the only reason indicated by the Court in the impugned Order. The issue is squarely answered by the recent unreported decision of this Court in Writ Petition No.294/2003 dated 7th August, 2003 in the case of Vishwas Yeshwant Vaingankar v. Mrs. Helena Mascarenhas e Souza Ticlo and another. In the circumstances, the Order which is impugned in this application deserves to be set aside. It is rightly contended on behalf of the respondents that as the Court below has not addressed itself to the issue of whether

sufficient cause for the fourth adjournment was made out, the appropriate course would be to remand the matter to the Trial Court for considering the application afresh on the question whether the plaintiffs had made out sufficient cause for granting the fourth adjournment as claimed.

5. In the circumstances, the impugned order is set aside and the application at Exh.37 is restored to the file of the Trial Court for being considered afresh in the above terms in accordance with law. It is made clear that this Order may not be understood to be an expression of opinion on merits of the case which will have to be adjudicated by the Trial Court in the subject application. The Trial Court shall ensure that the application is decided as expeditiously as possible, in any case not later than 15th December, 2003.

6. Petition allowed in the above terms with costs to be paid by the petitioner to the respondents, quantified at Rs.5000/-. Costs to be paid within two weeks from today. Costs is condition precedent of allowing this Writ Petition. It will be open to the Trial Court to consider the request of both the parties

for filing further affidavits/pleadings, if made, on its own merits.

A.M. KHANWILKAR, J.

sl.